

Council Chambers-City Council  
City Hall-City of Lodi  
Monday, October 20th., 1930

Regular meeting at 8.05 o'clock P.M. Councilmen Keagle, Roach, Steele, Weihe and Spooner present, none absent.

Minutes of regular meeting held October 6th., 1930 read, approved as read and so endorsed by the Mayor.

Order of Public Hearings passed by unanimous consent.

Communications received from California Real Estate Board and City of Grand Rapids, Mich. ordered filed.

Quarterly reports for quarter ended September 30th. received, read and ordered filed as submitted by the City Treasurer and City Clerk.

After discussion regarding turn on charges for water and electricity as now imposed, the matter was referred to the Committee on Public Utilities by the Mayor.

Bills in the amount of \$2,280.98 as approved by the finance committee were ordered paid on motion, the same comprising the mid-month payrolls, warrants #14876-14907 inc.

Mr Glenn West, City attorney, after stating that pending suits against East Bay Municipal Utility District and Pacific Gas & Electric Company had been set for trial on January 12, 1931, presented and read at length a resolution to be numbered No. 622 embodying an offer in equity to be presented prior to trial and the same was passed and adopted by the following vote:-

AYES: Councilmen, Steele, Weihe, Keagle, Roach & Spooner.

NOES: Councilmen, None. ABSENT: None.

After the adoption of the foregoing Resolution No. 622, the City Council passed and adopted Resolution No. 623, directing the City Attorney to enquire into the rights of East Bay Municipal Utility District to divert waters of the Mokelumne River for the use of localities other than those embodied in the District as constituted at the time its water applications were filed. This Resolution was adopted by the following vote:-

AYES: Councilmen, Weihe, Roach, Keagle, Steele and Spooner.

NOES: Councilmen, None. ABSENT: None.

(Note-True copies of the above numbered resolutions appear at pp 410-A et seq of these minutes).

No further business appearing, the City Council adjourned to the day and hour of its next regular meeting.

Attest:

J. F. Blakely, City Clerk.

Minutes read and approved without correction.

November 3rd., 1930.

## RESOLUTION NO. 622

CITY COUNCIL, CITY OF LODI

WHEREAS, There is pending in the Superior Court of the State of California, in and for the County of San Joaquin, suit No. 22,415, entitled, City of Lodi, a municipal corporation, plaintiff, vs. East Bay Municipal Utility District, et al., defendants, involving the protection of the rights of the City of Lodi to percolating waters derived from the Mokelumne River and furnishing the basis of the City's water supply; and

WHEREAS, the City Council is advised by the attorneys representing the City in said action that in their opinion the City should present to the opposing parties therein an offer to do equity in the situation out of which this action has arisen, with a view to assuring these parties and the Court of the anxiety of this City to do what is fair and right in the premises; and

WHEREAS, the engineering advisers of the City Council have made an extended study of the percolating water situation on the lands adjoining the Mokelumne River, and have submitted their ideas of what can and should be equitably done in the premises;

NOW, THEREFORE, in consideration of these recommendations, and of the desire of this Council to preserve, if possible, friendly relations between the City of Lodi and the surrounding <sup>and the people</sup> community, and the governments of the East Bay cities, the City Attorney is hereby authorized and directed to submit to the Board of Directors of the East Bay Municipal Utility District and to the Pacific Gas and Electric Company, the two principal defendants in said litigation, the following offer, viz. :

The council of the City of Lodi is advised by its attorneys that the pending lawsuit (No. 22,415) between the City of Lodi and the East Bay Municipal Utility District and Pacific Gas and Electric Company has been placed on the calendar of the Superior Court of San Joaquin County for trial.

Before committing the people of this community to the expense and ill feeling which the protracted airing in court of the controversy over the ownership of and rights to the waters of the Mokelumne River is bound to entail, the Council of the City of Lodi believes that it should make an offer to the defendants in this litigation. This offer, if accepted, may bring about a friendly termination of the whole controversy, and if not accepted, will nevertheless be evidence of the willingness of the City of Lodi to do what it considers equity in the premises.

The offer is based upon the belief of all the members of the Council that the waters of the Mokelumne River belong in the first instance to the owners of the lands riparian thereto and to the owners of the lands in the Mokelumne Basin which overlie the ground waters fed from these lands by the flood and natural runoff of this river. This Council is advised and believes is the law of California, established by numerous decisions of our highest court.

If both the Pacific Gas and Electric Company desires to store and use and the East Bay Municipal Utility District desires to store and divert to the bay communities a portion of the waters of the Mokelumne, the City of Lodi, through its council, insists that this storage, use and diversion must be made in such a way as not to injure the owners of lands riparian to the surface flow of or overlying the ground waters fed by this river. The City of Lodi derives its municipal water supply from these ground waters and is in duty bound to protect it against impairment in quantity or quality.

Very truly yours,

The city has caused diligent study of the hydrography of the Mokelumne region to be made by competent engineers for more than a year last past, with the object, among other things, of determining what steps it could reasonably and equitably demand that the defendants in this action take as a condition precedent to being permitted to make their proposed diversions. It is now prepared to submit and hereby submits the following as the offer of the City of Lodi to do equity in these proceedings:

**First:** The City of Lodi, upon the conditions herein set forth and not otherwise, will waive objections to the storage and diversion from the Mokelumne River by Pacific Gas and Electric Company and East Bay Municipal Utility District of the amounts of water specified, at the times indicated and for the purposes designated in their several applications listed in their respective answers to said suit No. 22,435, and in the permits and licenses granted or to be granted in pursuance thereof:

**Second:** Pacific Gas and Electric Company shall release continuously from the tail-race of Electric Power House, whenever the combined natural flow and storage on the North Fork of the Mokelumne permit, not less than one hundred seventy-five cubic feet per second of water, and not to interfere further with the passage of said amount of water down the Mokelumne River and through the area lying east of the Steelridge dam. Such release shall be in addition to any releases which said corporation may be compelled to make in order to satisfy any other water rights on said Mokelumne River.

**Third:** East Bay Municipal Utility District shall permit all water released by Pacific Gas and Electric Company up to one hundred seventy-five cubic feet per second, measured at Paradise Dam, to pass into and through Middle Bar Reservoir (when constructed) and the Paradise Reservoir for the use and purposes of the City of Lodi and other riparian users and overlying land

owners in the area tributary to the Mokelumne River east of the Woodbridge Dam. Such release shall be in addition to any other releases which the said District may be required to make to satisfy other water rights on the Mokelumne River.

Fourth: Said Pacific Gas and Electric Company and East Bay Municipal Utility District shall jointly finance the acquisition, construction, completion and operation of the following hydraulic works on the Mokelumne River designed to preserve an equivalent effect of the flow and hydro-static head of said river under historical conditions of natural flow, to-wit:

1. Mokelumne Reservoir and dam with a storage capacity of 20,000 acre feet.
2. Five collapsible ponding dams to be built at approximately the points indicated on the accompanying plan and profile.
3. Ponding amount on 500 acres of land to be periodically flooded by said dams.
4. Capitalized operating cost of said Reservoir and ponds estimated to be \$450,000.

Fifth: A decree shall be entered by the Court pursuant to stipulation in the above mentioned case to be to the effect that the injunctive relief sought by the plaintiff therein shall be suspended so long as the defendants comply with the terms of the above offer, but shall be effective if and when said ~~defendants~~ defendants or either of them ceases or fails, in whole or part, to comply with said terms.

Sixth: Nothing in the foregoing offer shall be construed as affecting in any way the rights of any of the parties in the litigation pending in and on appeal from the Superior Court of Calaveras County with reference to riparian rights on lands situated in Andover and Calaveras Counties and riparian to the Mokelumne River.

In submitting the foregoing offer, the City of Lodi points out that it is designed to accomplish only what the Mokelumne River and its natural conditions has done for the city's water supply, and incidentally for other pumping irrigators and riparian owners, for nearly half a century past. That is to say, the contemplated water releases and ponding works will furnish (1) an adequate water supply for the riparian and adjacent lands overlaying the Mokelumne percolation area, including the city's wall tracts; (2) a hydro-static head in each of the ponds sufficient to charge the adjacent underground area in place of the natural flood heights that will be lost; (3) storage capacity sufficient to flush the river channel through the periodic releases of surges of water designed to clean the channel of silt and algae and restore its natural purity; and (4) a fund to pay the expense of doing by artificial means operation that which has heretofore been done without expense by nature.

The engineers for the City of Lodi estimate that the foregoing works can be constructed and the operating fund established at a cost approximating \$1,422,000. The City Council of Lodi believes that this sum, together with the small water release suggested, is a very adequate compensation for the privileges sought by Pacific Gas and Electric Company and the East Bay Municipal Utility District, and furnished only a reasonable and proper protection for the city's underground water supply.

The City Council of Lodi believes that adoption of the foregoing plan should enable the above named appropriators to effect an amicable settlement of all pending disputes with riparian and over-lying land owners in San Joaquin County east of the Woodbridge dam, subject to payment of additional compensation to individual owners in a few cases where special damage may be shown.

Nothing in the foregoing is to be construed as an admission by the City of Lodi that its legal rights are other than those asserted in the pending suits against the parties therein named to enjoin any diversion whatever of the waters of the Mokelumne. It is made in the interest of doing equity and restoring the amity and cooperation which should exist between the great cities forming the East Bay Municipal Utility District and constituting a profitable power market for the Pacific Gas and Electric Company and the farming communities of northern San Joaquin County constituting one of the most important supporting areas for the growth and prosperity of these municipalities.

RESOLUTION NO. 623.

WHEREAS the City of Lodi has commenced and there is now pending certain suits against East Bay Municipal Utility District and others, defendants, for the purpose of restraining said defendants from diverting any of the waters of the Mokelumne River; and whereas said East Bay Municipal Utility District is now operating partly upon United States Government Land, a certain reservoir for the purpose of impounding and storing waters of said river, which reservoir is being operated pursuant to permit issued by the Federal Power Commission;

AND WHEREAS said East Bay Municipal Utility District is diverting and intends to divert certain waters of said river, pursuant to an alleged permit, or permits, heretofore issued by the Division of Water Rights of the State of California;

AND WHEREAS it has been rumored that said East Bay Municipal Utility District intends to sell, furnish and deliver, waters from said river, to the City and County of San Francisco and to other municipalities;

NOW THEREFORE, BE IT RESOLVED That the City Attorney of said City of Lodi be and he is hereby authorized as follows:

1. To write such letter or letters to, and make such inquiries of said Federal Power Commission as may be necessary for the purpose of ascertaining whether or not any permit heretofore issued by said Federal Power Commission authorizes said East Bay Municipal Utility District to furnish, supply, sell or deliver any of the waters of said Mokelumne River to any person, firm, corporation, municipality or political subdivision for use or consumption outside of said East Bay Municipal Utility District.

2. To write such letter or letters and make such inquiries of the Division of Water Rights of the State of California as may be necessary for the purpose of obtaining from said Division of Water Rights its <sup>opinion</sup> ~~position~~ and information as to whether or not any permit or permits heretofore issued by said Division of Water Rights authorize



said East Bay Municipal Utility District to divert from the Mokelumne River any waters to be furnished to any other person, firm, corporation or municipality for use or consumption outside of said East Bay Municipal Utility District.

3. To write such letter or letters and to make such inquiries as may be necessary for the purpose of ascertaining from the Division of Water Rights of the State of California whether or not said East Bay Municipal Utility District has any right to sell and deliver to the City and County of San Francisco any water, out of any water supply (other than the Mokelumne River) owned by said district and thereby to increase the amount of water which said district intends to divert from said Mokelumne River for use and consumption within the boundaries of said East Bay Municipal Utility District, reference being hereby made to the fact that permits heretofore issued to said district by the Division of Water Rights of the State of California provided, in substance, and subject to prior vested rights, that said East Bay Municipal Utility District shall have the right to divert from said Mokelumne River, such of the waters thereof as the progressive needs of said district may require, up to the limitations otherwise provided in such permits.

4. To send a copy of this resolution to and write such letter or letters and make such inquiries as may be necessary of said East Bay Municipal Utility District for the purpose of ascertaining whether or not said district intends to sell, furnish or deliver to the City and County of San Francisco or to any other municipality any waters from said Mokelumne River, or from other sources for use or consumption outside the corporate limits of said district.

5. To send a copy of this resolution to, and write such letter or letters to and make such inquiries of said City and County of San Francisco as may be necessary for the purpose of inquiring from said City and County of San Francisco whether or not it intends to purchase water from said East Bay Municipal Utility District, and if so what the

source of said waters shall be, when, if at all, it intends to take or receive such waters, and for the purpose of obtaining a copy of such contract or contracts as are or may hereafter be made between the City and County of San Francisco and said East Bay Municipal Utility District regarding such waters.

## CITY OF LODI

OFFICE OF THE CITY CLERK

STATE OF CALIFORNIA, )  
County of San Joaquin. )<sup>ss.</sup>

I do hereby certify that the attached is a full, true and correct copy of  
Resolution No. 623 as passed and adopted by the City Council of  
the City of Lodi at its regular meeting held October 20, 1930.

as the same appears of record in the office of the City Clerk of the City of Lodi.

In testimony whereof I have hereunto set my hand and the seal of the City of  
Lodi, this 21st day of October, 1930.



*J. F. Blaney*  
CITY CLERK OF THE CITY OF LODI

By \_\_\_\_\_

DEPUTY CITY CLERK.